



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No: 5134-21

Ref: Signature Date

█  
Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

Although you did not file your application in a timely manner, the Board waived the statute of limitations in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 7 January 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

Prior to enlisting, you were arrested in November of 1974 for public drunkenness. You began a period of active duty in the Marine Corps on 10 January 1978. On 6 June 1978, you were counseled for off-duty conduct and drinking. The following month, on 6 July 1978, you were

dropped from your training school due to medical reasons. Your medical records recommend a possible change of assignment based on your self-reports that your symptoms might improve in a more humid environment. Your command requested a change of assignment, which was denied by Headquarters Marine Corps on 21 August 1978, with the direction to retain you locally for referral to a medical board to determine fitness for duty. After several months of reported symptoms, medical professionals remained unable to determine an underlying cause for your reported pain. On 23 August 1978, you were referred to a psychiatric consultation to evaluate whether your symptoms were the result of a personality disorder or malingering; however, the chief of neuropsychology reported that you had a normal psychiatric status and that the exam was "fruitless." You failed to return from authorized leave from 3 – 7 September 1978 and received nonjudicial punishment (NJP) for that Article 86, Unauthorized Absence (UA), offense on 20 September 1978. On 1 October 1978, your command received an unsigned letter regarding disposition of a medical board held on 26 September 1978, which recommended discharge for unsuitability. Your command recommended administrative discharge for unsuitability due to depressive neurosis on 12 October 1978. This recommendation was forwarded for endorsements and legal review, and the separation authority approved your discharge for unsuitability with a characterization of service of General (Under Honorable Conditions), as warranted by your service record based on your NJP misconduct. However, a response to a Congressional Inquiry received on 30 October 1978 specified that your discharge basis was pending the results of a medical board to determine the basis of unsuitability or medical discharge. A report of a medical board convened on 9 November 1978 diagnosed you with depressive neurosis, a condition which predated your military service and was not aggravated by your service, and a secondary diagnosis of habitual excessive drinking which also predated your military service. The board recommended that you be administratively discharged on the basis of physical disability. On 17 November 1978, the separation authority endorsed the recommendation of the Medical Board, and you were discharged on 8 January 1979 with a final performance and conduct trait average of 3.9/3.9 out of 5.0.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge, your belief that your discharge would upgrade to an Honorable characterization of service after 6 months if you accepted a General discharge, and your contentions that: (a) you suffered from chronic depression and alcoholism during your military service and your misconduct was a direct result of these conditions; and (b) your status of "awaiting disposition" for your medical board contributed to your dysfunctionality and misconduct, resulting in the low conduct mark. In reviewing your contention of suffering from a mental health condition or disability, the Board considered the AO in making its determination. The AO observed that a medical board determined that your disabilities pre-existed your enlistment and were neither incurred during, nor aggravated by, your military service. The AO further opined that, although the alcohol-related misconduct of your UA could be attributed to your depression, it more likely related to your continued behavior of pre-service alcohol use.

In its deliberations, the Board concurred with the AO's assessment that, although there is evidence that you experienced a mental health condition during your military service and that your condition contributed to your separation, there is insufficient evidence that your pre-existing

condition was incurred during your military service or that all of your misconduct could be attributed to an unfitting condition. As a result, the Board determined that your alcohol-related misconduct outweighed the mitigating evidence you presented. Accordingly, even after considering all relevant and available evidence, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/24/2022

█  
Executive Director  
█